



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 130326296-3552-01]

RIN 0648-BD10

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Reef Fish Fishery of the Gulf of Mexico; Coastal Migratory
Pelagic Resources of the Gulf of Mexico and South Atlantic;
Abbreviated Framework

AGENCY: National Marine Fisheries Service (NMFS), National
Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement management measures described in an abbreviated framework to the Fishery Management Plans (FMPs) for the Reef Fish Resources of the Gulf of Mexico prepared by the Gulf of Mexico Fishery Management Council (Gulf Council), and Coastal Migratory Pelagic Resource prepared by the Gulf Council and the South Atlantic Fishery Management Council (South Atlantic Council). If implemented, this rule would eliminate the requirement to submit a current certificate of inspection (COI) provided by the U.S. Coast Guard (USCG) with the application to renew or transfer a Federal Gulf of Mexico (Gulf)

coastal migratory pelagic (CMP) or reef fish charter vessel/headboat permit (hereafter referred to as a for-hire permit). The rule would eliminate the restriction on transferring for-hire permits to a vessel of greater authorized passenger capacity than specified on the permit. The rule would also prohibit the harvest or possession of CMP or reef fish species on a vessel with a Gulf for-hire permit that is carrying more passengers than is specified on the permit. The intended effect of this proposed rule is to simplify the passenger capacity requirements for transfers and renewals of Gulf CMP and reef fish for-hire permits to provide more flexibility in the use of these permitted vessels.

DATES: Written comments must be received on or before [**INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**].

ADDRESSES: You may submit comments on this document, identified by "NOAA-NMFS-2013-0065", by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0065, click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to Peter Hood, Southeast Regional Office, NMFS, 263 13th Avenue South, St.

Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of the abbreviated framework, which includes a regulatory impact review, a Regulatory Flexibility Act analysis, and a social impact assessment, may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov>.

Comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted in writing to Anik Clemens, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; and the Office of Management and

Budget (OMB), by e-mail at OIRA_Submission@omb.eop.gov, or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Southeast Regional Office, telephone 727-824-5305, e-mail Peter.Hood@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish and CMP fisheries are managed under their respective FMPs. The Gulf reef fish FMP was prepared by the Gulf Council and the CMP FMP was prepared by the Gulf and South Atlantic Councils and are implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

The Magnuson-Stevens Act requires NMFS and regional fishery management councils to prevent overfishing and achieve, on a continuing basis, optimum yield (OY) from federally managed fish stocks. To reduce the risk of overfishing, permit moratoria were placed on Gulf CMP and reef fish for-hire permits to cap fishing effort. The purpose of this action is to simplify the passenger capacity requirements for transfers and renewals of Gulf CMP and reef fish for-hire permits to provide more flexibility in the use of these permitted vessels.

In 2003, moratoria were established for for-hire permits for the Gulf CMP and reef fish fisheries through Amendments 14 and 20

to the respective FMPs (68 FR 26230, May 15, 2003). The intended effect of these moratoria was to cap the effort and passenger capacity of Gulf for-hire vessels operating in these fisheries at the level documented in March 2001, while the Council evaluated whether limited access programs were needed to permanently constrain effort. These moratoria were extended indefinitely in June 2006, through Amendments 17 and 25 to the respective FMPs (71 FR 28282, May 16, 2006) and created the current limited access system for this sector.

Regulations implementing the moratoria on Gulf for-hire permits limit permit transfers and renewals to vessels that have the same passenger capacity or a lower passenger capacity to limit overall fishing effort. Because passenger capacity is currently based on the USCG COI, this limits the ability of the owner of a permitted vessel to transfer the Gulf for-hire permit to a vessel that has a higher passenger capacity listed on the COI or to renew the permit under the higher passenger capacity listed on the COI. Under such scenarios, the only way to renew or transfer a permit is to have the USCG adjust the COI so that it is less than or equal to the passenger capacity identified on the Gulf for-hire permit, which was based on the COI of the vessel when the moratorium Gulf for-hire permit was first issued, even though a vessel could safely carry more passengers, or

subsequently has had the COI revised to carry more passengers.

This proposed rule would eliminate the requirement to submit a current USCG COI with the application to renew or transfer a Gulf for-hire permit, eliminate the restriction on transfer, and implement a provision that would prohibit the harvest or possession of reef fish or CMP species on vessels with a Gulf for-hire permit that is carrying more passengers than is specified on the Gulf for-hire permit. Because the passenger capacity for the Gulf for-hire vessel when fishing would be based on the COI of the vessel when the moratorium Gulf for-hire permit was first issued, the cap on fishing effort, which was the original purpose of the moratorium permits, would be maintained. As a result of this action, the requirements to renew or transfer a for-hire permit would be simplified, for-hire effort control in the reef fish and CMP fisheries would be maintained, and vessel owners would be allowed to carry more passengers for non-fishing activities if their COI is greater than the passenger capacity on their fore-hire permit.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator, NMFS, has determined that this proposed rule is consistent with the abbreviated framework, the FMP, the Magnuson-Stevens Act and other applicable law, subject

to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

The purpose of this proposed rule is to eliminate the requirement to use the passenger capacity listed on the USCG COI in the renewal or transfer of Federal Gulf for-hire permits and instead, implement the requirement to use the passenger capacity listed on the Gulf for-hire permit. This would be expected to increase the profits of affected Gulf for-hire businesses while continuing to prevent overfishing and achieving the OY of the species harvested by these businesses. The Magnuson-Stevens Act provides the statutory basis for this proposed action. No duplicative, overlapping, or conflicting Federal rules have been identified. This proposed rule would not introduce any changes to current reporting, record-keeping, or other compliance requirements, except as discussed below with respect to passenger capacity fishing restrictions.

This proposed rule would be expected to affect all for-hire vessels with a Gulf for-hire permit. A Gulf for-hire permit is required for for-hire vessels to harvest reef fish or CMP species in the Gulf exclusive economic zone (EEZ). On March 1, 2013, 1,348 vessels had a valid (non-expired) or renewable reef fish for-hire permit and 1,377 vessels had a valid or renewable CMP for-hire permit. An expired permit is renewable for one year after expiration. Many Gulf for-hire vessels have both the reef fish and CMP charter for-hire permits and 1,440 unique vessels had one (either a reef fish or CMP permit) or both for-hire permits. The Gulf for-hire fleet is comprised of charter vessels, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. Among the 1,440 vessels with at least one Gulf for-hire permit, 80 are believed to primarily operate as headboats and 1,360 primarily operate as charter vessels.

This proposed rule would also affect Gulf for-hire vessels that do not have a Gulf for-hire permit that attempt to purchase and receive through transfer a Gulf for-hire permit from a permitted vessel. The number of Gulf for-hire vessels that do not have a Gulf for-hire permit and may wish to acquire one through transfer is unknown.

The average charter vessel is estimated to earn

approximately \$81,700 (2012 dollars) and the average headboat is estimated to earn approximately \$247,000. These estimates apply to vessels with and without a Gulf for-hire permit.

NMFS has not identified any other small entities that would be expected to be directly affected by this proposed rule.

The Small Business Administration has established size criteria for all major industry sectors in the U.S., including fish harvesters. A business involved in the for-hire fishing industry is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$7.0 million (NAICS code 713990, recreational industries) for all its affiliated operations worldwide. All for-hire vessels expected to be directly affected by this proposed rule are believed to be small business entities.

The proposed elimination of the use of the passenger capacity specified on the USCG COI during the transfer or renewal process for Federal Gulf for-hire permits would be expected to allow Gulf for-hire permit transfers and renewals to occur in a timelier and more efficient manner, result in less disruption in vessel operation, and result in increased revenue to affected entities. Vessels with a higher passenger capacity on their COI than on their Gulf for-hire permit, in the case of permit

renewals, or on the Gulf for-hire permit they are attempting to acquire through transfer, would not be required to obtain a new COI with an adjusted (lower) passenger capacity to match the passenger capacity listed on the Gulf for-hire permit. As a result, these vessels would not have to incur the costs associated with re-inspection or reduced revenue associated with operational delay re-inspection may precipitate. Vessels that provide non-fishing for-hire services could carry more passengers, subject to the passenger capacity specified by their COI, than when fishing and not be limited to the lower passenger capacity specified on their Gulf for-hire permit. As a result, revenue from these services (non-fishing for-hire) could be increased. Available data, however, are insufficient to quantify these potential increases.

The proposed prohibition on the harvest or possession of reef fish and CMP species on vessels with a Gulf for-hire permit that is carrying more passengers than is specified on the Gulf for-hire permit would be expected to reduce revenue for vessels that may previously have carried more passengers than specified on their Gulf for-hire permit, though few vessels are expected to have engaged in this practice. Current regulation, although intended to limit effort per vessel to the number of passengers on the original moratorium permit, only places passenger

restrictions on the renewal or transfer of for-hire permits; no passenger restrictions are placed on the vessel when engaged in fishing. In theory, the restrictions placed on permit renewal or transfer should have, were intended to, and likely did, result in vessels with consistent (equal) passenger limits specified on both the Gulf for-hire permit and the COI. In practice, however, it has been possible for the passenger limits on the two documents to be unequal and, as a result, allow a vessel to carry more passengers when fishing than the limit specified on the Gulf for-hire permit. This could occur if, for example, a vessel renewed the Gulf for-hire permit, or received one through transfer, was re-inspected by the USCG, and received a COI with a higher maximum passenger limit than specified on the Gulf for-hire permit. If inspected at sea, the vessel would not violate passenger restrictions as long as the number of passengers was less than or equal to the safe limit specified on the COI even if carrying more passengers than specified on the Gulf for-hire permit. As a result, the vessel could carry more passengers while fishing than specified on the Gulf for-hire permit and benefit, financially, from the higher passenger load. This would be a temporary advantage to the vessel, however, the permit could not be renewed (or transferred) with a COI with a higher passenger limit than specified on the Gulf for-hire permit.

Thus, to continue to carry more passengers than specified on the Gulf for-hire permit when fishing, a new COI would have to be obtained specifying the lower limit prior to permit renewal and, upon renewal, re-inspection would need to occur to "recover" the higher limit. Such behavior would not be expected to be common or frequent. Although the fee for inspection may not be onerous, \$300 for a vessel less than 65 ft (20 m) in length, relative to the potential increase in revenue associated with carrying more passengers, justifying to the USCG the need for doubling of the number of inspections as a strategic move may be difficult. Additionally, the ability to carry more passengers under a situation like this has likely been a regulatory loophole that few, if any, vessel owners are expected to have identified in the past, or would recognize in the future, and taken advantage of even temporarily. As a result, although the proposed prohibition would prevent behavior previously allowed, little to no change in economic benefits would be expected because the behavior that would be prohibited is not believed to have occurred in the past or be expected to occur in the future in the absence of this proposed prohibition.

Few vessels have encountered a problem associated with Gulf for-hire permit renewal or transfer due to passenger capacity issues in recent years, with only an estimated seven denials

(renewal or transfer) occurring from 2011 through the time of this analysis. Thus, only a small portion of the Gulf for-hire fleet has been directly affected by current regulations. However, with declining seasons for some key species, notably red snapper, the decline in the general national economy and slow pace of economic recovery, service diversification may become increasingly important to help Gulf for-hire businesses remain economically viable. Thus, for some individual small businesses, the economic effects of this proposed rule could be significant. However, overall, because few vessels have encountered a problem with conflicting passenger capacities on their Gulf for-hire permit and COI at either the permit renewal or transfer stage, only a small portion of the Gulf for-hire fleet would be expected to be directly affected by this proposed action.

In summary, the proposed rule, if implemented, would not be expected to have a significant impact on a substantial number of small entities and, as a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection-of-information displays a currently valid

OMB control number.

This proposed rule contains collection-of-information requirements subject to the PRA. NMFS is revising the collection-of-information requirements under OMB control number 0648-0205. NMFS estimates eliminating the requirement for Gulf for-hire permit holders to submit a current COI to renew or transfer a Gulf reef fish or CMP for-hire permit would decrease the overall reporting burden under OMB control number 0648-0205. The requirement to submit a current COI would be removed from the instructions on the Federal Permit Application for Vessels Fishing in the EEZ and a COI would not need to be submitted with the application to renew or transfer a permit. NMFS estimates these requirements would decrease the reporting burden for Gulf for-hire permit holders who are renewing or transferring a Gulf for-hire permit on average by 1 minute per response. These estimates of the public reporting burden include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection-of-information.

These requirements have been submitted to OMB for approval. NMFS seeks public comment regarding: Whether this proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information

will have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments regarding the burden estimate or any other aspect of the collection-of-information requirement, including suggestions for reducing the burden, to NMFS and to OMB (see ADDRESSES).

List of Subjects in 50 CFR Part 622

Certificate of inspection, Fisheries, Fishing, For-Hire, Gulf, Reporting and recordkeeping requirements.

Dated: June 18, 2013.

Alan D. Risenhoover, Director, Office of Sustainable Fisheries,
performing the functions and duties of the Deputy Assistant Administrator
for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq.

2. In § 622.13, paragraph (g) is added to read as follows:
§ 622.13 Prohibitions--general.

* * * * *

(g) Fail to comply with the passenger capacity related requirements in §§ 622.20(b)(1) and 622.373(b)(1).

3. In § 622.20, paragraphs (b)(1)(i)(A) and (B) are revised and paragraph (b)(1)(iv) is added to read as follows:
§ 622.20 Permits and endorsements.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) Permits without a historical captain endorsement. A charter vessel/headboat permit for Gulf reef fish that does not have a historical captain endorsement is fully transferable, with or without sale of the permitted vessel.

(B) Permits with a historical captain endorsement. A charter vessel/headboat permit for Gulf reef fish that has a historical captain endorsement may only be transferred to a vessel operated by the historical captain and is not otherwise transferable.

* * * * *

(iv) Passenger capacity compliance requirement. A vessel operating as a charter vessel or headboat with a valid charter vessel/headboat permit for Gulf reef fish, which is carrying more passengers on board the vessel than is specified on the permit, is prohibited from harvesting or possessing the species identified on the permit.

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4. In § 622.373, paragraphs (b)(1) and (2) are revised and paragraph (e) is added to read as follows:

§ 622.373 Limited access system for charter vessel/headboat permits for Gulf coastal migratory pelagic fish.

* * * * *

(b) * * *

(1) Permits without a historical captain endorsement. A charter vessel/headboat permit for Gulf coastal migratory pelagic fish that does not have a historical captain endorsement is fully transferable, with or without sale of the permitted vessel.

(2) Permits with a historical captain endorsement. A charter vessel/headboat permit for Gulf coastal migratory pelagic fish that has a historical captain endorsement may only be transferred to a vessel operated by the historical captain and is not otherwise transferable.

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(e) Passenger capacity compliance requirement. A vessel operating as a charter vessel or headboat with a valid charter vessel/headboat permit for Gulf coastal migratory pelagic fish, which is carrying more passengers on board the vessel than is specified on the permit, is prohibited from harvesting or possessing the species identified on the permit.

[FR Doc. 2013-14907 Filed 06/20/2013 at 8:45 am; Publication Date: 06/21/2013]